

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

THOMAS MARTIN SUKUP	§	
VS.	§	CIVIL ACTION NO. 1:10-CV-190
M. MARTIN, WARDEN	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Petitioner, Thomas Martin Sukup, an inmate confined at FCI Beaumont, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the petition be denied.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court concludes petitioner’s objections are without merit. As the Magistrate Judge correctly concluded, petitioner has received all the relief which this Court might possibly grant him in response to this petition. Summary judgment evidence provided by respondent establishes the BOP gave petitioner’s request appropriate and individualized consideration, using the five factors set forth in 18 U.S.C. § 3621(b). The duration of RRC placement is a matter to which the BOP retains discretionary authority. *Walker v. Sanders*, 2009 WL 2448023 (C.D. Cal. Aug. 10, 2009); *see also* *Burton v. Federal Bureau of Prisons*, 2011 WL 3299816 (E.D. Tex. June 1, 2011).

To the extent petitioner argues respondent's Declaration of K. Gasaway is not competent summary judgment evidence as it is an unsworn declaration, this claim must also be denied. 28 U.S.C. § 1746 states that a matter may be "evidenced, established, or proved by the unsworn declaration . . . in writing of such person which is subscribed by him, as true under penalty of perjury." *See* 28 U.S.C. § 1746. The unsworn declaration of K. Gasaway meets this requirement stating "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief." *See* Exhibit A, Respondent's Motion for Summary Judgment. Finally, to the extent petitioner argues K. Gasaway submitted perjured testimony and/or the documents provided by respondent are fraudulent and/or altered, there is simply nothing in the record to substantiate this claim.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So **ORDERED** and **SIGNED** this **16** day of **March, 2012**.



Ron Clark, United States District Judge